

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	Case No. 2:00-cr-00049
v.)	
)	(The Honorable Donetta W. Ambrose)
HERBERT LAMONT BALLARD)	

**DEFENDANT HERBERT LAMONT BALLARD'S
MOTION FOR RESENTENCING OF PROBATION VIOLATION**

NOW COMES, the Defendant, HERBERT LAMONT BALLARD, by his appointed counsel, STANLEY W. GREENFIELD, Esquire, and GREENFIELD & KRAUT, and files this Motion For Resentencing of his Probation Violation, and in support thereof, avers as follows:

1. On March 8, 2006, this Court sentenced the Defendant to a term of twenty-one (21) months imprisonment for violation of his probation at the above numbered term.

2. At the time of the sentence described in Paragraph 1, the Defendant was already detained by the United States Magistrate in connection with his Indictment at Criminal No. 06-42, for which he will be sentenced on September 20, 2006.

3. This Court sentenced Mr. Ballard in accordance with the Guidelines for probation violation, based on the Probation Report submitted to the Court, which indicated that the Defendant had committed a Class B misdemeanor in Pennsylvania for a DUI charge that was a local offense potentially punishable by a term of imprisonment exceeding one year. 7B1.1(a)(2)

4. Under the Guidelines, any potential sentence for any charge created by a Class B designation requires a twenty-one month imprisonment penalty. §7B1.4(a)

5. This Class B designation was erroneous in that the penalty for Mr. Ballard's misdemeanor DUI charge in Pennsylvania was, in fact, only a maximum of six months (75 P.S. §3802(D)1), thus making it only a Class C misdemeanor, which, under the Guidelines, requires only an eight month sentence as a probation violator. 7B1.4

6. The Probation Office and the Defendant have thoroughly discussed this mistaken classification, researched the law, and agree to now present this matter to the Court for Defendant's resentencing, based on a corrected record, so as to permit the Court to impose a sentence that is fair and just under the circumstances.

WHEREFORE, Defendant, HERBERT LAMONT BALLARD, requests that the Court vacate its sentence of twenty-one months, and resentence the Defendant to a term of eight months, consistent with the Guidelines and the record.

Respectfully submitted,

GREENFIELD & KRAUT

/s/Stanley W. Greenfield
Stanley W. Greenfield, Esquire
PA I.D. No. 00622

Greenfield Court
1035 Fifth Avenue
Pittsburgh, Pennsylvania 15219
(412) 261-4466

Attorney for Defendant,
Herbert Lamont Ballard